

Wednesday, August 31, 2005

The Board met at its offices at 450 N Street, Sacramento, at 10:25 a.m., with Mr. Chiang, Chair, Mr. Parrish, Vice Chair, Ms. Yee and Mr. Leonard present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

ADMINISTRATIVE SESSION

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, made introductory remarks regarding Multistate Tax Commission and Federation of Tax Administrators Activity (Exhibit 8.1).

Speakers: Joe Huddleston, Executive Director, Multistate Tax Commission

Mr. Leonard requested a report on the nexus leads that the Multistate Tax Commission provided to the Board.

The Board deferred further discussion of this matter to later in the day.

Exhibits to these minutes are incorporated by reference.

CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS

Dale A. and Anita L. Waltz, 288719

1999, \$31,242.00 Assessment

2000, \$9,202.00 Assessment

2001, \$273.00 Assessment

For Appellant:

Martin A. Logies, CPA

For Franchise Tax Board:

William Gardner, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that the Dale A. Waltz Jr. and Anita L. Waltz Charitable Foundation was an operating foundation pursuant to Internal Revenue Code section 4942(j)(3), during the appeal years, when appellants made contributions to the foundation.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.2)

Respondent's Exhibit: Financial Chart (Exhibit 8.3)

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Stephen and Laura M. Trimmerger, 288720

1999, \$13,262.00 Assessment

2000, \$7,125.00 Assessment

2001, \$42,108.00 Assessment

For Appellant:

Martin A. Logies, CPA

For Franchise Tax Board:

William Gardner, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

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Issues: Whether appellants' family foundation was a "private operating foundation," as defined in the Internal Revenue Code, thereby allowing appellants to deduct the fair market value of property they contributed to the foundation.

If the family foundation was not a "private operating foundation," thereby limiting the charitable contribution deduction to appellants' basis in contributed property, whether appellants have substantiated their basis.

Appellant's Exhibit: Miscellaneous Documents (Exhibit 8.4)

Respondent's Exhibit: Financial Chart (Exhibit 8.5)

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Alpine Electronics of America, Inc., 281865

Year Ended 3-31-89, \$211,150.00 Claim for Refund

For Claimant: Michele Chang, Representative

Glenn Bystrom, Representative

For Franchise Tax Board: Jeffrey Margolis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has shown that it is entitled to relief under Revenue and Taxation Code section 25137.

Whether appellant has shown that respondent overstated the amount of the gain on appellant's sales of inventory purchased from its parent corporation by understating the basis of the inventory.

Respondent's Exhibit: Miscellaneous Documents (Exhibit 8.6)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang not participating, the Board submitted the appeal for decision.

Sierra Pacific Industries, 268309

Year Ended 12-31-99, \$891,411.00 Claim for Refund

For Claimant: Jon A. Sperring, Representative

Mai Nasrallah, Representative

Jon D. Gartman, Secretary and Director of Taxes

For Franchise Tax Board: Daniel Biedler, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant's steam generation assets are qualified property for purposes of the Manufacturer's Investment Credit, pursuant to Revenue and Taxation Code section 23649, subdivision (d).

Appellant's Exhibit: Charts (Exhibit 8.7)

Respondent's Exhibit: Miscellaneous Documents (Exhibit 8.8)

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board reversed the action of the Franchise Tax Board.

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The Board recessed at 12:20 p.m. and reconvened at 1:33 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

Beneficial California, Inc., 203445

1987, \$244,183.23 Claim for Refund

1988, \$109,032.00 Claim for Refund

1989, \$126,131.00 Claim for Refund

For Claimant:

Jeffrey M. Vesely, Attorney

Annie Huang, Attorney

For Franchise Tax Board:

Jeff Margolis, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether or not respondent introduced a “new matter” in this appeal after the assessment, causing the burden of proof to shift to respondent with respect to any newly introduced factual issues requiring the presentation of different evidence.

Whether or not respondent properly disallowed a portion of the interest expense deductions included in appellant’s unitary group’s 1987-1989 combined reports under Revenue and Taxation Code section 24425 on the basis that such interest expense deductions were allocable to the nontaxable insurance company dividends included in such reports.

Whether or not the Board has jurisdiction to consider appellant’s request for abatement of the estimated tax penalty in 1987; and, if so, whether or not appellant has established its entitlement to such abatement.

Whether or not the Board has jurisdiction to consider appellant’s argument that respondent’s proportional allocation of otherwise deductible interest expense to tax-free insurance company dividends is unconstitutional; and, if so, whether or not the argument is correct.

Respondent’s Exhibit: Miscellaneous Documents (Exhibit 8.9)

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision on September 1, 2005.

SALES AND USE TAX APPEALS HEARINGS

Donald Harold Lee, 223821 (UT)

6-15-01, \$1,087.50 Tax, \$108.75 Failure to File Penalty

For Petitioner:

Don H. Lee, Taxpayer

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the transfer of a 1997 Ford Econoline XL van to petitioner in partial satisfaction of litigation is a purchase for use in California subject to use tax.

Whether petitioner has shown grounds for abating the failure to file penalty.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the value of the vehicle be reduced according to the Kelly Blue Book to the value of \$11,463.00, otherwise redetermine as recommended by the Appeals Division.

Mr. Chiang directed staff to provide Mr. Lee with a transcript of his hearing.

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Virginia Pineda Gaona, 261782 (KHO)

1-1-00 to 3-31-03, \$16,409.24 Tax, \$00.00 Negligence Penalty

For Petitioner: Herminio P. Bustos, Representative

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the evidence shows that petitioner is entitled to an additional reduction to the re-audited amount of taxable sales.

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Channel Star Excursions, Inc., 260347 (KH)

7-1-00 to 6-30-03, \$30,415.49 Tax

For Petitioner: Brian Gerhart, Taxpayer

For Sales and Use Tax Department: Susan Wengel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's alleged reliance upon written advice received in a prior audit warrants relief from the sales tax liability.

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

All American Truck & Equipment, Inc., 260718 (CH)

4-1-00 to 6-30-03, \$50,978.62 Tax

For Petitioner: Robert Bucci, CPA

Misha Groysman, Taxpayer

For Sales and Use Tax Department: Susan Wengel, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Department properly disallowed charges claimed as nontaxable labor.

Whether petitioner may be relieved of tax pursuant to the provisions of Revenue and Taxation Code section 6596.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

International Investment Properties, Inc., 144677 (KH)

7-1-98 to 12-31-00, \$65,847.17 Tax, \$7,024.61 Negligence Penalty, \$7,024.61 Finality Penalty

For Petitioner: Paul Grewal, CPA

Dalvinder Singh Grewal, Taxpayer

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the audited ratio of taxable to total store merchandise purchases is excessive.

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Whether the evidence warrants further adjustments to the audited taxable store markup.

Whether the evidence supports lowering the tax liability because taxpayer asserts it was initially informed by the Sales and Use Tax Department that the tax liability was approximately \$57,000.00.

Whether the negligence penalty was properly applied.

Whether the finality penalty applies.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, the Board ordered that the pilferage allowance be increased from 1 percent to 2 percent.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the remainder of the petition be submitted for decision.

The Board recessed at 3:35 p.m. and reconvened at 3:45 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel present.

ADMINISTRATIVE SESSION

ADMINISTRATIVE MATTERS, CONSENT

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Mr. Parrish, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 8.10).

Rudy O. Ahumada, Business Taxes Specialist II, Audit and Information Section,
Tax Policy Division, Headquarters

Donald P. Bennett, Business Taxes Compliance Supervisor III, Culver City
District Office

Colette Bourke, Office Technician, Chicago Out-of-State District Office

Karen Epling, Senior Tax Representative, Fuel Taxes Division, Property and
Special Taxes Department

Gary F. Kelly, Business Taxes Compliance Supervisor II, Culver City District
Office

Douglas L. Madland, Business Taxes Specialist I, Norwalk District Office

Arcangelina Navarrete, Business Taxes Representative, Consumer Use Tax
Section, Headquarters

Timothy J. Nerby, Associate Property Appraiser, Valuation Division, Property
and Special Taxes Department, Headquarters

Carol Pariot, Tax Technician I, Culver City District Office

Celia M. Victorio, Tax Technician, Culver City District Office

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Action: Approve the amended Board retirement resolution of Horace Reese, Jr., Associate Tax Auditor I, San Francisco District Office (Exhibit 8.11).

Action: Approve the Board Meeting Minutes of May 24-25, 2005 and June 7-8, 2005.

Action: Approve the Board meeting date change from November 8 to November 1, 2005 in San Diego (Exhibit 8.12).

Action: Approve the 2006 Board Workload Plan (Exhibit 8.13).

Action: Approve Revenue and Taxation Code section 6355, Coins and Bullion Bulk Sale Adjustment (Exhibit 8.14).

Action: Approve the 2005-06 Emergency Telephone Users Surcharge Rate of .65 percent and publish the rate in these Board meeting minutes (Exhibit 8.15).

Action: Approve extension of time to complete and submit 2005-06 Local Assessment Rolls pursuant to Revenue and Taxation Code section 155 granted to Amador County (Exhibit 8.16).

Action: Approve summons to annual meeting of the Board and county assessors (Exhibit 8.17).

Action: Approve proposed revisions to Audit Manual Chapter 4 (Exhibit 8.18).

BOARD COMMITTEE REPORTS

Legislative Committee

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Legislative Committee report with corrections (Exhibit 8.19).

Business Taxes Committee

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 8.20).

OTHER ADMINISTRATIVE MATTERS

Executive Director's Report

Ramon Hirsig, Executive Director, introduced Jerri Dale, Chief, Customer and Taxpayer Services Division, who provided an update on the E-Filing Project and other electronic services (Exhibit 8.21).

Mr. Hirsig reported on Multistate Tax Commission and Federation of Tax Administrators Activity (See Exhibit 8.1).

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The Board directed staff to provide an analysis of Mr. Leonard's question at the October 2005 Board Meeting regarding the delegation of the Executive Director to represent the Board before the MTC/FTA.

Mr. Hirsig introduced Kristine Cazadd, Chief Counsel, Legal Department, who provided an update on the Legal Department reorganization.

Mr. Hirsig provided a status report on the Assistant Chief Counsel classification (Exhibit 8.22).

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that all four Assistant Chief Counsel positions in the Legal Department be classified as Career Executive Assignment, Level IV, on a prospective basis.

Budget Change Proposals

Karen Johnson, Deputy Director, Administration Department, made introductory remarks regarding budget change proposals (Exhibit 8.23).

Mr. Chiang requested staff research internal records for previous discussions regarding e-filing.

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved E-Services (Placeholder) – BCP No. 1 as recommended by staff.

Speaker: David R. Doerr, representing Cal Tax, spoke on the tax gap budget change proposals related to sales and use tax.

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that a placeholder for the Discovery Team – Tax Gap BCP No. 2a be submitted to inform the Department of Finance of the Board of Equalization's current activities with the redirection of the seven positions to investigate potential leads and the development of the data base, with the possibility of transmitting a subsequent finance letter in the spring.

Action: Mr. Leonard moved that the Public Awareness Campaign for Use Tax – Tax Gap BCP No. 2b be deferred, pending solicitation for free articles in tax professional publications. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

The Board deferred consideration of this matter to September 1, 2005, directing staff to research state administrators in other jurisdictions regarding the development of their public awareness programs.

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Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved Alternative 4, Agricultural Inspection Station Tax Leads – Tax Gap BCP No. 2c.

Action: Upon motion of Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board deferred consideration of the Enforcement of Consumer Purchases of Tobacco Products from Out-of-State Sellers – Tax Gap BCP No. 2d to September 1, 2005.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and duly carried, Mr. Parrish, Ms. Yee and Mr. Leonard voting yes, Mr. Chiang and Ms. Mandel voting no, the Board approved Alternative 2, Retail Licensing Enforcement – Tax Gap BCP No. 2e.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and duly carried, Mr. Chiang Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Parrish voting no, the Board approved Alternative 3, Streamlined Sales Tax Project (SSTP) – BCP No. 3.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the International Fuel Tax Agreement (IFTA) / North America Free Trade Agreement (NAFTA) Interim Program (Placeholder) – BCP No. 4 as recommended by staff.

Speaker: Steven K. Alari, Business Taxes Compliance Specialist, Investigations Division, Legal Department, spoke in a private capacity.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved Alternative 1, AB 71 – Cigarette and Tobacco Products Compliance Fund Funding Shift – BCP No. 5 as recommended by staff.

Speakers: Teresa Casazza, Vice President, California Taxpayers' Association
Bill Harris, Intel Corporation.

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved Alternative 1, Valuation Factors – Biopharmaceutical and Hi-Tech Equipment – BCP No. 6 as recommended by staff.

Action: The Board deferred consideration of the Legal Disclosure Teams – BCP No. 7 to September 1, 2005.

Approval of Contract Over \$1 Million

Karen Johnson, Deputy Director, Administration Department, made introductory remarks regarding the interagency agreement with the California Integrated Waste Management Board (Exhibit 8.24). Ms. Johnson also provided the prior year contract (Exhibit 8.25).

Action: The Board deferred consideration of the matter to September 1, 2005.

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**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES
HEARINGS HELD AUGUST 31, 2005**

Dale A. and Anita L. Waltz, 288719

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Stephen and Laura M. Trimberger, 288720

Final Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Alpine Electronics of America, Inc., 281865

Final Action: Mr. Parrish moved that the action of the Franchise Tax Board be reversed as to Issue 1 and sustained as to Issue 2. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, Mr. Chiang not participating.

Ms. Mandel moved that the action of the Franchise Tax Board be sustained. The motion was seconded by Ms. Yee but failed to carry, Ms. Yee and Ms. Mandel voting yes, Mr. Parrish and Mr. Leonard voting no, Mr. Chiang not participating.

The Board deferred consideration of this matter to October 25, 2005.

SALES AND USE TAX APPEALS HEARING

William Lee Davies, 252306 (UT)

4-17-02, \$3,393.00 Tax

Shelley Howard Davies, 251371 (UT)

4-17-02, \$3,393.00 Tax

For Petitioner:

Appearance Waived

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the purchase and use of the two 2002 Cadillac Escalades by petitioners are subject to California use tax.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD AUGUST 31,
2005**

Virginia Pineda Gaona, 261782 (KHO)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

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Channel Star Excursions, Inc., 260347 (KH)

Final Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

All American Truck & Equipment, Inc., 260718 (CH)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and duly carried, Mr. Chiang, Mr. Parrish, Ms. Yee and Ms. Mandel voting yes, Mr. Leonard voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Upon motion of Mr. Leonard, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered the amnesty interest penalty be relieved if, within 30 days of the Notice of Redetermination, petitioner either: pays the full amount of tax and interest due; or enters into an installment agreement with the Sales and Use Tax Department for full payment of the tax and interest due within 13 months, and successfully completes that installment agreement.

International Investment Properties, Inc., 144677 (KH)

Final Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the remainder of the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 5:50 p.m.

The foregoing minutes are adopted by the Board on February 1, 2006.

Note: The following case was removed from the calendar prior to the meeting: *Mohammad Wahid Nayibkhil and Arian Baraki, 235824 (KH)*.